GOH BEOW YAM v. REG.

[O. Cr. J. (Whyatt C.J.) December 5, 1956]

[Singapore — Criminal Motion No. 16 of 1956]

Criminal Procedure Code (Cap. 132), ss. 291 & 294 — Application for bail by person who has filed notice of appeal — Discretion of Magistrate.

In this case the appellant was convicted on his own plea of guilty of being in possession of opium and opium smoking utensils and was remanded in accordance with the provisions of section 10 of the Dangerous Drugs Ordinance (Cap. 137), for four weeks for the purpose of examination and report. After the conviction and order were made, counsel for the appellant applied to the Magistrate that the appellant be allowed to withdraw his plea. This was refused. Counsel for the appellant thereupon filed a notice of appeal and applied to the Magistrate for a stay of execution of the remand order and for bail. Both applications were refused. The appellant thereupon applied to the High Court.

Held: (1) under section 291 of the Criminal Procedure Code a Magistrate has a discretion whether to grant or refuse bail and where the Magistrate has so exercised his discretion the High Court will not interfere unless it appears that the Magistrate in arriving at his decision has acted on some wrong principle; (2) in this case the Magistrate's decision to refuse bail was fully justified and there were no grounds whatever for interfering with it.

Cases referred to:—

(1) *Johore v. R.* 11 S.S.L.R. 30.

(2) *R. v. Lim Soh Chwee* B.C.G.H. 178.

(3) *R. v. Tan Tee* (1948) M.L.J. 153.

(4) *In re Kwan Wah Yip* (1954) M.L.J. 146.

CRIMINAL MOTION.

N. A. Christopher for the appellant.

T. A. Mahony (Crown Counsel) for the respondent.

Whyatt C.J.: — The appellant was convicted on his own plea of guilty of being in possession of opium and opium smoking utensils and was remanded, in accordance with the provisions of section 10 of the Dangerous Drugs Ordinance, for a period of four weeks for the purpose of examination and report by the Opium Treatment Centre Advisory Committee, and sentence was postponed pending consideration of the Report of the Committee. At about four o'clock in the afternoon of the day on which the appellant was convicted, counsel made an application to the Magistrate that the appellant be allowed to withdraw his plea of guilty on the ground that he had not understood the charge and had not intended to plead guilty. The Magistrate, however, was satisfied that the appellant had fully understood the charge and refused the application. The following day counsel for the appellant filed a notice of appeal and applied to the Magistrate for a stay of execution of the remand order and for bail. Both applications were refused and the appellant now applies to this Court.

The statutory jurisdiction to grant bail pending an appeal from a Magistrate is contained in section 291 of the Criminal Procedure Code which reads as follows:—

"A District Court or a Magistrate's Court may grant bail to any person who has filed a notice of appeal against his conviction in accordance with section 290".

It is clear that the granting of bail under this section is a discretionary matter and the question to be decided on this motion is whether the learned Magistrate exercised his discretion properly in the present case. Section 291 was only recently introduced into the Criminal Procedure Code and consequently there have not, as yet, been any reported decision upon it. Previously certain powers analogous to the power of granting bail were exercised under section 294 of the Criminal Procedure Code which provides:—

"No appeal shall operate as a stay of execution, but the Courts below and the High Court may stay execution on any judgment, order, conviction or sentence pending appeal on such terms as to security for the payment of any money or the performance of any act or the suffering of any punishment by or in such judgment, order, conviction or sentence as to the Court seem reasonable".

This section has been the subject of a number of decisions but it will, I think, be sufficient to refer to three of them in order to indicate the trend of judicial opinion in this matter during the past thirty or forty years.

In the case of *Johore v. R.*[1] decided in 1907, Mr. Justice Fisher took the somewhat extreme view that bail should be granted in almost every case unless there was strong reason to suppose the appellant would abscond and he subsequently re-iterated this view in the unreported case of *R. v. Lim Soh Chwee*[2] set out in Braddell on Common Gaming Houses at page 178. In 1948 the matter came before the Chief Justice of Singapore, Sir Charles Murray-Aynsley, in the case of *R. v. Tan Tee*[3]. In that case the learned Chief

Justice stated that it had always been the practice for Magistrates to allow bail to a convicted person unless the Magistrate had reasons for not allowing it. "The usual reason" he said, "for not allowing bail is the expectation that the appellant will abscond." It is clear the learned Chief Justice was not saying that this was the only reason for refusing bail and the judgment leaves it open to Magistrates to have regard to other considerations in deciding whether or not to grant bail to a convicted person pending appeal. This is made plain in the later case of *In re Kwan Wah Yit*[1] where Mr. Justice Spenser Wilkinson declined to follow the earlier decisions of Mr. Justice Fisher and in a lucid and persuasive judgment suggested that the considerations which should guide Magistrates in deciding whether to grant or refuse bail pending the hearing of an appeal were the gravity or otherwise of the offence; the length of the term of imprisonment in comparison with the length of time which is likely to elapse before the appeal is heard; whether there are difficult points of law involved; whether the convicted person has previous convictions; the possibility of his becoming involved in similar or other offences whilst at liberty; and whether the security imposed will ensure his attendance before the appellate Court.

I respectfully agree with the views expressed by Mr. Justice Spenser Wilkinson in that case but I would add that the considerations enumerated by him, which I regard as amplifying and not conflicting with the judgment of the Chief Justice in *R. v. Tan Tee*[3], should not be regarded as an exhaustive list. It is clear, for instance, that if an accused has pleaded guilty that fact must be considered by the Magistrate when exercising his jurisdiction and doubtless other matters, depending upon the circumstances of individual cases, will require consideration from time to time. The jurisdiction is discretionary and it would be wrong to attempt to lay down an exhaustive definition of the considerations which a Magistrate must have in mind when exercising it. Moreover, as in all cases where the jurisdiction is of a discretionary nature, the High Court will be slow to interfere unless it appears that the Magistrate, in arriving at his decision, has acted on some wrong principle. That was certainly not so in the present case. The charge and the facts were fully explained to the accused by an able and experienced interpreter and the learned Magistrate was quite satisfied that he fully understood the charge before pleading guilty. I am not surprised that the learned Magistrate was unimpressed when, a few hours later, counsel made an application for permission to withdraw the plea on the ground that his client had not understood the charge and therefore refused the application. In my opinion the Magistrate's decision to refuse bail in this case was fully justified and there are no grounds whatever for interfering with it. The motion is accordingly dismissed.

Motion dismissed.

Solicitors: *Christopher & Francis.*

SUHAIME BIN HAJI SERAT v. REG.

[C. C. A. (Whyatt C.J., Knight and Tan Ah Tah JJ.) December 5, 1956]

[Singapore — Criminal Appeal No. 35 of 1956]

Criminal Trial — Questions put by trial Judge to accused who makes an unsworn statement from the dock.

In this case the appellant who was charged with murder, elected at the close of the prosecution case, to make an unsworn statement. At the end of his statement the learned Judge put certain questions to him. On the appeal, it was argued that the learned Judge was wrong in putting the questions.

Held: (1) an accused person who makes an unsworn statement should not be questioned by the trial Judge except for the purpose of clearing up ambiguities; (2) in this case the questions put went further than mere clarification and actually elicited important facts and admissions which would not otherwise have been before the jury and moreover these matters were referred to again in the summing-up of the learned Judge; (3) it was impossible to say in these circumstances that the questions did not have the effect of prejudicing the appellant and therefore the conviction must be set aside.

COURT OF CRIMINAL APPEAL.

L. Rayner for the appellant.

T. A. Mahony (Crown Counsel) for the respondent.

The judgment of the Court was delivered by:—

Tan Ah Tah J.: — The appellant was convicted on the 6th September 1956 of the murder of one Nenek binte Hashim and was sentenced to death. He now appeals from that conviction.